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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,065	09/09/2003	Nancy Lucas	CGLO30351US01	9198
53175 7590 01/23/2009 CARGILL, INCORPORATED 15407 MCGINTY ROAD WEST WAYZATA, MN 55391				
EXAMINER				
PASCUA, JES F				
ART UNIT		PAPER NUMBER		
3782				
MAIL DATE		DELIVERY MODE		
01/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/657,065

**Applicant(s)**

LUCAS ET AL.

**Examiner**

Jes F. Pascua

**Art Unit**

3782

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2, 4-17, 19, 20, 22-30, 32, 42, 44, 46-54, 56, 57, 59, 61 and 63-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 4-17, 19, 20, 22-30, 32, 42, 44, 46-54, 56, 57, 59, 61 and 63-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 2, 4-17, 19, 20, 22-30, 32, 42, 44, 46-54, 56, 57, 59, 61 and 63-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, lacks antecedent basis for "the body including no more than two opposing panels". Although the original specification supports a body having two opposing panels, it is unclear from the written description

that applicant contemplated the exclusion of more than two opposing panels in the body. This is a new matter rejection.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 4, 5, 8-17, 19, 20, 24-30, 32, 42, 44, 48-54, 56, 57, 59, 61 and 63-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,593,229 to Warr, U.S. Patent No. 4,610,029 to Huhtala et al. and U.S. Patent No. Des. 327,217 to Wallace.

Warr discloses the claimed invention, especially the handle comprising a patch. However, Warr does not show the handle formed from a flap formed from portions of the opposing panels. Huhtala et al. shows that it is known in the art to form a handle from opposing panels (Fig. 3d) or from a flap formed from portions of opposing panels in an analogous bag (Fig. 5). It would have been obvious to a person having ordinary skill to form the handle of Warr from a flap formed from portions of opposing panels, as taught by Huhtala et al., in order to increase the carrying strength of the handle.

Furthermore, Warr and Huhtala et al. disclose the claimed invention, as discussed above. Warr especially discloses an end of a bag including a tear seam. However, Warr does not show the opposite end of the bag including a handle and tear

seam. Wallace teaches that it is known in the art of bags to provide a mirror image of one end of a bag at the bag's opposing end (Fig. 7). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the opposing ends of the modified Warr bag with identical end structures (i.e., the modified Warr handle and tear seam), as taught by Wallace, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

6. Claims 2, 4-10, 13-15, 19, 20, 22-25, 27-29, 32, 42, 44, 46-50, 53, 54, 59, 61 and 63-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warr, Huhtala and U.S. Patent No. 5,578,562 to Anspacher.

Warr discloses the claimed invention, especially one end of the bag having a handle comprising a patch. However, Warr does not show the handle formed from a flap formed from portions of the opposing panels. Huhtala et al. shows that it is known in the art to form a handle from opposing panels (Fig. 3d) or from a flap formed from portions of opposing panels in an analogous bag (Fig. 5). It would have been obvious to a person having ordinary skill to form the handle of Warr from a flap formed from portions of opposing panels, as taught by Huhtala et al., in order to increase the carrying strength of the handle.

Furthermore, Warr and Huhtala et al. disclose the claimed invention, as discussed above, except for a rigid plastic handle on the end of the bag opposing the bag end with the integral handle. Anspacher teaches that it is known in the art of bags to provide a rigid plastic handle on a bag end that is opposite the bag end that includes

an integral handle. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the rigid plastic handle of Anspacher on the end opposite the end with the integral handle in the modified Warr bag, in order to facilitate manipulating the bag. Regarding claims 7, 23 and 47, the recitation "injection-molded plastic handle" does not define over the rigid plastic handle of Anspacher. The method of forming the handle is not germane to the issue of patentability of the handle itself. Therefore, this limitation has been given little patentable weight.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 2, 4-17, 19, 20, 22-30, 32, 42, 44, 46-54, 56, 57, 59, 61 and 63-65 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear issue

requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/

Primary Examiner, Art Unit 3782